IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4158 OF 2004
IN
CRIMINAL APPEAL NO. 132 OF 2004

Gorakh Ramkrushna Maurya & Anr. .. Applicant

Vs

State of Maharashtra .. Respondent

Mr. S.V. Marwari for the applicant.

Mrs. V.B. Bhosale, PP, for the respondent-State.

CORAM: S.B. MHASE &
ANOOP V. MOHTA, JJ.

DATED: 03RD DECEMBER, 2004

P.C.:

. Heard Mr. Marwari for the appellant. This is a bail application for accused Nos.1 and 2 from Sessions Case No. 312 of 2001 decided by the Additional Sessions Judge, Palghar. The death of the wife of the accused No.1 has been caused by burn injuries and it is alleged that she was set on fire by both the accused. It has further transpired that there was a nylon ball in the mouth of the deceased and thereby, it is alleged that it is not a case of suicide, but it is a case of homicidal death. The accused No.2 is the father-in-law of the

deceased. The original accused No.3 Radhika was the mother-in-law. She has been acquitted. It has transpired in the evidence that the accused Nos.1 and 2 were residing separate and the report has been lodged by accused No.2 with the Police Station. There is acquittal under Section 498A. Under these circumstances, we find it proper, prima facie, that if there is no offence under Section 498A, since the accused were residing separate, then the death has taken place in the premises where accused No.1 was residing and the accused No.2 has reported the crime. Since the death has taken place in the room where accused No.1 was residing alongwith the deceased, we find that it is a custodial death. We are, therefore, not inclined to grant bail to the accused No.1. Under these circumstances, prima facie, we feel that the appellant No.2 is entitled to bail during the pendency of this Appeal.

2. Mrs. Bhosale, learned PP, who appeared for the State, submitted that there is involvement of both the accused and now the crime has been proved against them and, therefore, bail should not be granted. However, in view of the above referred position, which is reflected from paragraphs 2 and 3 of the judgment and order, we find it appropriate to release the accused

No.2 on bail by imposing certain conditions.

3. Mrs. Bhosale, at this point, submitted that these accused have no permanent residence and they are likely to shift from the residence and will not be then available at the time of final hearing of the Appeal. Taking into consideration this aspect, we pass the following order:

O R D E R :

(A) The sentence, so far as accused No.2 is concerned, is hereby suspended till the final hearing of the Appeal.

(B) The accused No.2 be released on bail of Rs.15,000/- with two solvent local sureties.

(C) The accused No.2 shall not change his place of residence viz. Chawl No.1, Vajpayee Chawl, Hanuman Tekdi, Wevur, Tal. Palghar.

(D) The accused No.2 shall report to the Palghar Police Station, once in a week, i.e. on every Sunday in between 10.00 a.m. to 11.00 a.m.

(E) The application of accused No.1 for bail is hereby rejected.

4. Criminal Application is accordingly disposed of.

. Parties to act on an ordinary copy of this order, duly authenticated by the Registry of this Court.

[ANOOP V. MOHTA, J.] **[S.B. MHASE, J.]**

[srpasha@hc]